

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of RHEDA MAE ANNA KANE,
Deceased.

RENEE E. TOLEN,

Petitioner-Appellee,

v

MARIA RAE LEWIS,

Respondent-Appellant.

UNPUBLISHED
October 21, 2003

No. 239813
Livingston Probate Court
LC No. 01-004915-DE

Before: Meter, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the probate court's order imposing a constructive trust on the proceeds from decedent Rheda Mae Anna Kane's two annuities and money market account and ordering that the proceeds be distributed as part of the residue of the estate according to Kane's will. We affirm.

This case arose when petitioner requested the probate court to find that although the decedent designated respondent as the sole beneficiary of the three investments, they were assets of the estate because the decedent intended petitioner and respondent, her daughters, to share equally in any proceeds after her death.

Generally, a court may impose a constructive trust as an equitable remedy when justified by the facts. *In re Swantek Estate*, 172 Mich App 509, 517; 432 NW2d 307 (1988). This Court reviews equitable actions de novo and reviews the findings of fact supporting the decision for clear error. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997). "Clear error is found only when on review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *Peters v Gunnell, Inc.*, 253 Mich App 211, 221; 655 NW2d 582 (2002).

In the instant case, petitioner testified that when Kane drafted her will in July 1992, all of her assets, which included land contract receivables, a certificate of deposit, and her home in South Lyon, would have passed through her estate and been divided equally between petitioner

and respondent. Petitioner further testified that when Kane began purchasing annuity policies and investment accounts in 1993 and 1994, Kane made these purchases for the purpose of receiving a greater return on her investments, not to alter the disposition of her assets upon her death.

Petitioner also testified that during the purchase of the home in Brighton, Kane started to instruct the mortgagee's representative to title the property so that Kane, petitioner, and petitioner's husband would own the property as joint tenants with rights of survivorship. However, petitioner stated that Kane was confused about the effect this would have on the disposition of her estate. Petitioner further testified that even though Kane wanted the title of the home to reflect joint ownership between Kane, petitioner, and petitioner's husband, Kane intended for respondent to get her fair share of the equity in the Brighton home when Kane died.

There was also testimony that Kane treated both petitioner and respondent equally, lending both money during times of need. Respondent testified that she was not surprised by Kane's decision to divide her estate assets equally between respondent and petitioner but that she was surprised by Kane's decision to leave to respondent the bulk of her invested assets. Further, petitioner testified that Kane had occasionally commented that her assets were part of her estate and that she intended they be divided equally between petitioner and respondent on Kane's death, the fact that Kane kept the home she purchased with petitioner in her estate, supports that finding.

In reviewing the probate court's fact findings for clear error, we recognize the special opportunity the probate court had to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller* 433 Mich 331, 337; 445 NW2d 161 (1989). Here, the probate court found testimony from Kane's financial advisor, Glenn Spitz, inconsistent, and therefore not credible. Although Spitz testified that he and Kane went over every item on the investment applications, he also testified that Kane never indicated that she did not want petitioner to benefit from those investments and never explained why she was choosing respondent as the beneficiary of her investments. Deferring to the trial court's superior ability to assess the credibility of this witness, we conclude that the trial court did not clearly err when it found that Kane mistakenly designated respondent as the sole beneficiary of her annuities and as the joint owner of her money market account because she did not intend for respondent to inherit the bulk of her assets.

Respondent argues that, pursuant to MCL 487.703, a deposit to a jointly owned bank account with survivorship rights is "prima facie evidence" that the depositor intended for the surviving joint owner of the account to acquire title to the deposit. However, the probate court determined that petitioner established by reasonably clear and persuasive proof that Kane made a mistake when she designated respondent as the joint owner of her money market account, and, as discussed above, the court's finding that Kane had made a mistake was not clearly erroneous. Given petitioner's testimony that Kane told petitioner that her assets would be divided equally, and the testimony that Kane may not have understood how her investments would be disposed of on her death, the court's finding that Kane made a mistake in designating respondent as beneficiary of her annuities and joint owner of her money market account was not clearly erroneous.

Finally, we reject respondent's argument that she was entitled to attorney fees under MCL 600.2591 for petitioner's filing of a frivolous civil action.

Affirmed.

/s/ Patrick M. Meter

/s/ Michael J. Talbot

/s/ Stephen L. Borrello